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U. S. Citizenship and Immigration Services
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**U.S. Citizenship
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FILE:

MSC 06 102 15461

Office: LOS ANGELES

Date:

JUL 31 2009

IN RE: Applicant:



APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C § 1255a.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, or *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988.

On appeal, counsel for the applicant asserts that the applicant has submitted sufficient evidence to establish her eligibility for Temporary Resident status. Counsel does not submit additional evidence on appeal.

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. See section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. See section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. See 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. See CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M* also stated that “[t]ruth is to be determined not by the

quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant is a native of Mexico who claims to have resided in the United States since June 1981. She filed an application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on January 10, 2006.

In the Notice of Intent to Deny (NOID), dated February 15, 2007, the director stated that the applicant failed to submit sufficient evidence demonstrating her continuous unlawful residence, and continuous physical presence, in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated June 15, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID but failed to overcome the reasons for denial stated in the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status from before January 1, 1982 through the date she attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that she has not.

The evidence provided by the applicant consists of the following:

Employment Letter

The applicant submitted a letter of employment from [REDACTED] of Ohline Corporation from August 10, 1981 to April 1, 1994. It is noted that [REDACTED] does not indicate the capacity in which the applicant had been employed, and failed to provide the applicant's address at the time of employment. Also, the letter failed to show periods of layoff, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i). The letter, therefore, is not probative as it does not conform to the regulatory requirements.

Affidavits

- 1) An affidavit from [REDACTED] attesting that she met the applicant at the St. Francis X. Cabrini Church in July 1981, and since then she has met the applicant at church. [REDACTED] also attests to the applicant's character. However, the affiant does not indicate how she dates her acquaintance with the applicant, how frequently she had contact with the applicant, and whether the applicant has been a continuous residence since that time.
- 2) Affidavit from [REDACTED] and [REDACTED]. Mr. [REDACTED] attests that he first met the applicant in 1980. [REDACTED] attests that he met the applicant in 1981. Both affiants attest that they met the applicant at social gatherings and parties. The affiants, however, do not indicate where they first met the applicant; how they date their acquaintance with the applicant; how frequently they had contact with the applicant; and, whether the applicant has been a continuous residence since their acquaintance.
- 3) An affidavit from [REDACTED], attesting that he met the applicant in 1981, through his wife who worked with the applicant; and that they met the applicant every Sunday at church and at gatherings. [REDACTED], however, does not indicate how he dates his acquaintance with the applicant. It is also noted that although the applicant listed four (4) absences since her entry, for a total of approximately six (6) months absence from the United States from December 1986, [REDACTED] attests that he met the applicant, in church, weekly since they became acquainted.
- 4) An affidavit from [REDACTED], attesting that he met the applicant in 1981, through a friend, and they kept in touch and met on many occasions and family gatherings. Mr. [REDACTED] however, does not indicate how he dates his acquaintance with the applicant, how frequently he had contact with the applicant, and whether the applicant has been a continuous resident since that time.

The record of proceedings also contains letters, dated December 1, 2005, from [REDACTED] of St. Francis X. Cabrini Church, located at [REDACTED], Los Angeles, CA 90047-4997, and, dated December 1, 2005, from [REDACTED], of the Church of the Ascension, located at [REDACTED], stating that the applicant has been registered in the parish "for many years," and that she attends mass and provides financial

support. However, the letter does not specify whether the applicant had been a member or attended church during the requisite period.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

The letters from the St. Francis X. Cabrini Church, and the Church of the Ascension, do not comply with the above cited regulations because they do not: state the address where the applicant resided during attendance ... (membership) ... period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and, that attendance (membership) records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letters are not deemed probative and are of little evidentiary value.

Contrary to counsel's assertion, the applicant has failed to submit sufficient evidence to establish her continuous residence. As discussed above, the evidence provided, including letters and affidavits, lack essential details. As such, the evidence provided is insufficient to establish the requisite continuous residence. The applicant has not submitted any additional evidence in support of her claim that she entered the United States prior to January 1, 1982, and she had resided continuously in the United States during the entire requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish her continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date she attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.